Where do you live, sir? A. Hot Springs, Arkansas.

Q. Whereabouts in Hot Springs? A. 1100 Greenwood Avenue.

Q. Where do you work, sir? A. At the Jack Tar Hotel.

Q. Are you night auditor at the Jack Tar Hotel? A. I am.

Q. How long have you been at the Jack Tar Hotel? (1130) A. Since 1952.

Q. In your position as night auditor, do you have access to the records of the Jack Tar Hotel? A. I do.

Q. Are you familiar with those records? A. I am.

Q. And are the records maintained by the Jack Tar Hotel now substantially similar to those maintained in 1946 and subsequent years? A. The system has not been changed since the opening of the hotel; it has been the same.

Q. You are familiar with all the records? A. I certainly am.

Q. From your records, can you tell us if Frank Costello ever visited the Jack Tar Hotel? A. I can.

Q. Have you brought the records with you relating to those visits? A. Yes.

The Court: How do you spell the name of the hotel?

The Witness: J-a-c-k T-a-r Hotel & Bath, Incorporated of Arkansas.

The Court: Very well.

(Marked Government's Exhibits 276, 276-A through 276-G, respectively, marked for identification.)

Mr. Christy: For the record, your Honor, Government's Exhibits 276, 276-B, 276-D and 276-F are (1131) registration cards.

Government's Exhibit 276-C consists of four sheets.

Government's Exhibit 276-A consists of four sheets.

Government's Exhibit 276-E consists of four sheets.

Government's Exhibit 276-G consists of three sheets.

Q. Mr. Thomsen, I show you Government's Exhibit 276 for identification and ask you if that is a registration card at the Jack Tar Hotel for Frank Costello under the date of October 12, 1947? A. It is.

Q. And is Government's Exhibit 276-A for identification the folio sheets that go with that visit? A. They are.

Q. Government's Exhibit 276-B for identification, is that a registration card of Frank Costello under the date of March 18, 1948? A. It is.

Q. And Government's Exhibit 276-C, are those the folio sheets which go with that visit? A. They are.

Q. Government's Exhibit 276-D, is that a registration card of Frank Costello, under the date of October 12, 1948? A. It is.

(1132) Q. And is Government's Exhibit 276-E for identification the folio sheets which went with that visit? A. They are.

Q. And Government's Exhibit 276-F, is that a registration card under the name of Frank Costello on October 10, 1949? A. It is.

Q. And Government's Exhibit 276-G for identification, are those the folio sheets which originally—

Mr. Christy: Withdraw that question.

Q. Does the first folio sheet of Government's Exhibit 276-G have a name crossed out on it? A. It has.

Q. Was the name crossed out the name of Frank Costello? A. It was.

Q. Does that Exhibit 276-G go with the registration card Government's Exhibit 276-F for identification? A. It does.

Q. Are these registration cards and folio sheets records kept by the Jack Tar Hotel in the regular course of the hotel's business? A. They are.

Q. And is it the regular course of the hotel's business to keep such records? A. Oh, yes.

Q. When a customer registers in your hotel, on the registration card an account number is given to that— A. It is.

(1133) Q. —registration, is that correct? A. It is, the same as the folio number.

Q. That account number on the registration card is the same as the number on the first folio sheet? A. It is.

Q. So that there is no question about identifying the folio sheets with the person who registers? A. No, there could not be.

Mr. Christy: Your Honor, the Government offers Government's Exhibits 276 and 276-A through 276-G for identification into evidence.

(A pause.)

Mr. Fennelly: I object to Exhibit 276-G.

The Court: 276-G?

Mr. Fennelly: It appears on the face of it it relates to a person other than Mr. Costello.

Mr. Christy: I believe Mr. Thomsen testified that the name that was crossed out there was that of Frank Costello.

Mr. Fennelly: You will notice on the other two, your Honor, that it is not rubbed out, and the name is not Costello.

The Court: You mean on the others?

Mr. Christy: The other two sheets, following two sheets, in that exhibit.

(1134) Mr. Fennelly: Two sheets that are part of that exhibit.

The Court: May I see 276-F?

Mr. Fennelly: Also, the account numbers are different, as your Honor will notice, on the—

The Court: I will sustain the objection but you may examine the witness further with respect to that. As to the other exhibits—

Mr. Fennelly: There is no objection.

The Court: —you have no objection, and they are all admitted in evidence, that is, Exhibits 276 and 276-A through F.

(Government's Exhibits 276, 276-A through 276-F, inclusive, in evidence.)

Mr. Christy: May I examine Mr. Thomsen on this?

The Court: Yes.

Q. Mr. Thomsen, referring to Government's Exhibit 276-F in evidence, that is a registration card in the name of Frank Costello, is that correct? A. It is.

Q. Under the date of October 10, 1949? A. That is right.

Q. With an account number of 38878? A. Right.

Q. And the K number in the upper lefthand corner is 663114, is that correct? A. It is.

(1135) Q. Referring to the first sheet of Government's Exhibit 276-G for identification, what is the number in the upper righthand corner? A. 38878.

Q. That is the same number on the— A. Registration card.

Q. —registration card? A. Yes.

Q. Does the number 663114 appear on the first sheet of Government's Exhibit 276-G? A. It does.

Q. And is there a date alongside of the name which has been crossed out? A. October 10.

Q. Is that the same date that is on the registration card? A. It is.

Q. What is the name that has been written over the name that was crossed out? A. Name by the name of Douglass.

Q. Referring to the second sheet of Government's Exhibit 276-G for identification, what is the number in the upper righthand corner? A. 38986.

Q. Referring back to the first sheet, number 38,878 on Government's Exhibit 276-G, does it indicate on there that the account was forwarded to another folio sheet? A. It indicates that it was forwarded to 38986.

The Court: What was forwarded?

Mr. Christy: The account was forwarded.

(1136) The Court: What account?

Mr. Christy: This account, your Honor. The folio—

The Court: Identify "This" and "that" and "the" a little more clearly. That is the difficulty.

Q. This account was originally typed in the name of Frank Costello, is that correct? A. It was.

Q. And the second sheet—

The Court: And that had a number, that account, did it not?

Mr. Christy: That is this number here.

The Witness: Yes, sir, it had 38878.

The Court: Was the account number 38878 at

some time transferred to an account with a different number?

The Witness: It was, yes, sir.

The Court: What was the number of the account to which that was transferred?

The Witness: 38986.

Mr. Christy: Your Honor, may I ask him further?

The Court: You may.

Q. These folio sheets—

The Court: What I am trying to avoid, Mr. Christy, is "this" and "that" and "the."

Mr. Christy: Very well.

(1137) The Court: Because it doesn't mean anything.

Q. The first sheet which was originally carried in the name of Frank Costello covers a period of seven days, is that correct? A. It does.

Q. If a customer stays longer than seven days, then the account is forwarded to another folio sheet, is that right? A. It is.

Q. And there is an indication on the folio sheet which is used for one week—that indicates on there to which folio sheet the account is transferred? A. Yes.

Q. Or carried forward? A. It does.

The Court: Is that because each folio sheet is only large enough to accommodate the transactions of one week?

The Witness: It is.

The Court: Very well.

Q. Does the first sheet, originally carried in the name

of Frank Costello, Government's Exhibit 276-G for identification, indicate to which folio sheet the account was forwarded? A. It does.

Q. What is that number? A. 38986.

Q. Is the second sheet of Government's Exhibit 276-G the folio sheet numbered 38986? A. It is.

Q. And in whose name is that carried? (1138) A. Jim Douglass.

Q. On what day did Mr. Douglass check into the Jack Tar Hotel according to that folio sheet numbered 38986? A. October 17.

Q. So that was one week after Frank Costello checked in, according to your records? A. It was.

Q. Can you give us an explanation for that? A. Well, the only explanation I can give you is that Mr. Costello probably—he stayed the week and then—

Mr. Fennelly: Just a minute. Just a minute.

The Court: Sustained.

Q. Referring back to the first sheet of Government's Exhibit 276-G—

The Court: Have you any record there which will tell us, outside of the card—you have a registration from Mr. Costello on a certain day. What records have you with which you can tell how long he remained at the hotel and when, if at all, he paid whatever was due the hotel for whatever stay he had there?

The Witness: Well, according to our folios here—

The Court: No. I say, have you any other record, other than those—

The Witness: No, we have not.

(1139) The Court: —you have produced?

Q. But from this record, Government's Exhibit 276-G, would it indicate that Frank Costello was there for one week? A. It would—it does, yes.

The Court: In which form does it do it? Does it do it with the typing that has been stricken out or how?

You see, the difficulty, Mr. Witness, is that you have one name typed in. Then you have that stricken out and another name written over it, which written name corresponds with two other sheets with an entirely different account number.

The Witness: Well, it happens that the clerk has made an error in scratching that name out.

Mr. Fennelly: Just a minute.

Your Honor, I move to strike it out, that he made an error.

The Court: I will strike out the answer, yes.

Mr. Christy: Your Honor, I believe Mr. Thomsen—

The Court: That is what you think it shows.

The Witness: Yes.

The Court: That is what you mean to say? I will allow it. I will allow it as amended in that way.

Mr. Christy: Your Honor, Mr. Thomsen has (1140) testified from this record, from Government's Exhibit 276-G, that Frank Costello checked in on—

The Court: Now, we will let the jury go to their lunch.

Come back at 2.15. We will discuss this.

(To the jury) You may go now until 2.15. Meantime, remember my instructions, don't talk about the case. Don't bother about this discussion that we are having here on the question of admissibility. That is my headache, not yours.

(Jury retires.)

(The following proceedings were had in the absence of the jury.)

By the Court:

Q. Now, Mr. Witness, let me ask you, when was the first time that you saw these particular records which you have produced here, No. 276 and 276-A through 276-G? A. In 1952 is the time that I originally started for Jack Tar and—

Q. Well, now, when was it that you first had occasion to get a look at these papers which we have been discussing which are marked 276-G, namely, these three ledger sheets? A. Oh, about four or five months ago.

Q. Very well. Now, at the time you saw them, (1141) was the name, the typed name on the sheet, was that name stricken out? A. It certainly was.

Q. When you first saw it, as you saw it was the— A. Yes, it was taken out of our records as they are.

Q. And the name which appears in pencil was on it at the time you saw it? A. Yes, it was.

Q. Now, do you know whether or not the man who made the change is still in the employ of the hotel? A. I don't know. In fact, I know he isn't.

Q. At the time you saw it was he in charge, in the employ? A. He was not, no, sir.

Q. Have you ever had any occasion or opportunity to talk to him about this record? A. I have not.

Q. You never talked to anybody else that made the record? A. I have not, no, sir.

Q. Very well. So that when you undertake to express a thought about what those records show, are you just guess-

ing? A. No, sir; it is very irregular to have anybody make a change on a folio.

Q. Well, that does not quite answer the question. I agree with you that it is irregular. But what I want to find out is, are you just guessing at what happened here or have you any other record from which you can tell that the amounts which are charged there on those three sheets to a man named Douglass— (1142) A. I am just guessing, your Honor.

Q. You can't tell whether Mr. Douglass incurred that obligation or whether the defendant Costello incurred it, and you can't tell who paid it, can you? A. The reason why I am guessing is because—

Q. Will you just answer the question? Can you tell who incurred the obligation and can you tell us who paid it? A. I can tell who incurred the obligation on October 10th.

Q. You can tell that from the registration card. A. That is right.

Q. Have you any other record, have you any record telling who paid for it? A. No, sir, we have not.

Q. You couldn't tell us, for instance, now, whether the defendant Costello or this man Douglass paid for all or any part of the item shown on any of those three sheets? A. No, sir, we could not.

The Court: Very well. I will sustain the objection.

Mr. Christy: Your Honor, may I question him?

The Court: You may.

By Mr. Christy:

Q. Mr. Thomsen, from this first sheet number 33878 on which the name has been crossed out, it indicates that

Frank Costello was written on there originally with the (1143) typewriter— A. Yes.

Q. —under date of October 10th?

Mr. Fennelly: I object to that—

A. It does.

Mr. Fennelly: —as to what it indicates. The record speaks for itself.

The Court: On looking at it it appears that that is so, Mr. Fennelly. And this discussion is being held out of the presence of the jury.

Mr. Fennelly: I realize that.

The Court: So I will allow counsel to inquire.

Q. And that he checked in on October 10, 1949? A. He did.

Q. And the first entry on the folio sheet is under the date of October 10th? A. It is.

Q. And October 10th is the date that he checked in according to the registration card, Government's Exhibit 276-F in evidence, is that correct? A. It is, yes.

Q. Now, referring to the second sheet, 38986, that shows —that is carried in the name of Jim Douglass? A. It is.

Q. And it is the same room number listed on the first sheet, 38878? A. It is.

Q. And it is all part—the second sheet is part (1144) of the same account, is that correct? A. It is, yes.

Q. Now, does that second sheet indicate the date on which Jim Douglass checked into the hotel? A. It does.

Q. And what date is that? A. October 17.

By the Court:

Q. Well, now, what do you mean that it indicates? Let

me see what you mean? What entry is it that shows that that was the date that he quote checked into the hotel close quote?

(Mr. Christy hands to the Court.)

Q. Up here on the top, New Orleans, 10/17? A. Yes.

Q. It is the practice, is it, to enter a date up there indicating the date that he checked into the hotel? A. Yes, sir.

Q. You haven't produced, have you, any registration card, though, for him? A. No, we haven't. That is October 17.

Q. I see. Do you have a card for Douglass for any other date? A. No, we have not.

The Court: All right. Go ahead.

By Mr. Christy:

Q. Now, the third sheet, 39087, which is also part (1145) of the same account is also carried in the name of Jim Douglass with the same room number? A. It is, yes, sir.

Q. And that third sheet, although the first entry is on October 24th, indicates the date on which he checked into the hotel October 17, does it not? A. It does, yes, sir.

Q. So that it is the practice to put up there the date on which the guest checks in? A. Always, yes, sir.

The Court: Does it appear now that both the defendant Costello and this man Jim Douglass occupied the same room?

The Witness: They occupied the same room, yes, sir, that is the suite of rooms, but they occupied the same room.

The Court: I mean they occupied the same room,

whether it was more than one or not, they occupied it.

Q. Referring back to the second sheet, 38986, was there a payment on that date? A. There was, yes, sir.

Q. Now, that was the 17th? A. Yes.

Q. And that was the date that Mr. Douglass checked into the hotel? A. It was, yes, sir.

(1146) Q. And from then on the account was carried in his name? A. It was.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 276-G for identification into evidence and restricts the offer to the first sheet and to the second sheet only under the date of October 17 which shows a payment. The Government does not offer the balance of the second sheet number 38986 or the succeeding sheet 39087.

The Court: All right.

Mr. Fennelly, what do you say about that? I say, what do you say?

Mr. Fennelly: I object to it, your Honor, because there is no proof on the testimony of the witness that Mr. Douglass did not pay the account.

The Court: That is true, but I think that there is enough there, under all the circumstances and testimony, from which the jury might draw the inference that at least for the time that the records indicate the defendant occupied the same room, that is up until the 17th of October, when the records indicate that the man Douglass came in, they might—you may argue that it doesn't show that, but I think there is a sufficient basis there from which they might draw the inference that Mr. Costello paid for

whatever period of the time (1147) he occupied the room alone, and that is all that is now being offered.

Mr. Christy: That is correct.

Mr. Fenneliy: Will your Honor withhold ruling so I may have an opportunity to examine the witness preliminarily as to the admissibility?

The Court: Oh, yes, surely. I will withhold the ruling but I think that the offer, as limited, is admissible.

Very well. If that is all we have now we can have 15 minutes more eating time.

Would you like to say something?

Mr. MacMahon: Your Honor, I have one other preliminary matter.

The Government has subpoenaed Mr. Joseph Henschel as a witness in this trial, and his subpoena was returnable today. The Government is in receipt of a letter from Morris F. Steinberg, M.D. which I would like to show to your Honor. It is very brief.

(Mr. MacMahon hands to the Court.)

The Court: What is this word here, "medically contra-indicated"?

Mr. MacMahon: It is certainly a new one to me, your Honor. That is what it seems to be.

The Court: I suppose we get what it means. (1148) I am not quite sure that I understand what the doctor is driving at. But there it is, and you may mark it if you wish. What is your request?

Mr. MacMahon: Your Honor, I would like, the Government requests either a warrant of arrest for this witness—he has been under subpoena before; this is not the first time that he has failed to appear—

The Court: Well, can you do that as summarily as that? Isn't there a contempt involved here, if he is contumacious, and don't you have to proceed by a contempt rather than a summons to arrest?

Mr. MacMahon: It is my understanding, your Honor, that we can proceed by a bench warrant if a witness—

The Court: That may be so. But there is some indication here that a doctor says that it is "contra-indicated," whatever that means. I suppose it means that as a doctor he thinks that this man ought not be subjected to any of the stresses of testimony that a trial might impose upon him. I think under that circumstance that it would be hardly appropriate for a layman to overrule the doctor and order the man's summary arrest. But there are other procedures.

(1149) Mr. MacMahon: May we have him examined by a doctor appointed by the Court?

The Court: We can do that. I will try at lunch-time to think of an appropriate competent doctor by whom he may be examined.

Where does he live?

Mr. Christy: 315 Riverside Drive, your Honor.

The Court: Very well. I will give some thought to that. As a matter of fact, the last time I sat in 318 it seems to me I appointed some doctor, one of the staff of Columbia Presbyterian Medical Center. Would you be good enough to have somebody in your office check who that was? I can't think of who handled the case now, but your Chief Clerk would undoubtedly have a record of it.

Mr. MacMahon: All right, sir.

The Court: He examined, I think, two defendants.

He is on the staff of the Columbia Presbyterian. I think Mr. Horn would know who he is. I have no idea who he is. You might get me that name.

Mr. MacMahon: Yes, sir.

Your Honor, Dr. Robert Levy has examined this (1150) man previously for the Moreland Act Commission and has, therefore, some familiarity with the history of the patient.

The Court: Very well. That is Dr. Levy, the heart man?

Mr. MacMahon: Yes, sir.

The Court: He is also connected with Columbia, I think.

Mr. Christy: Yes. He is former president of the New York Heart Association, eminently qualified.

The Court: Yes. Very well. You prepare an order appointing Dr. Levy and I shall sign it.

Mr. MacMahon: Thank you, sir.

(Recess to 2.15 p.m.)

(1151) AFTERNOON SESSION

(Jury present.)

HANS THOMSEN, resumed.

Direct Examination by Mr. Christy (Continued):

Mr. Christy: Your Honor, at this time the Government offers Government's Exhibit 276-G and will restrict the offer—

The Court: Well, why don't you remove from the

exhibit those two pages which I have indicated would not be received?

Mr. Christy: Well, your Honor, there is only one page, that is, the final page. There is one entry on the second page, 38,986.

The Court: I understood in the discussion that we had before the recess, or before we left, that only the first page was going in.

Mr. Christy: The first column on the second page, in which there is a notation in the "Paid" column, not the final page.

The Court: Suppose you come up here and indicate to me what it is.

Wait for Mr. Fennelly.

(Sidebar discussion without the hearing of the jury.)

(Further sidebar discussion as follows:)

(1152) The Court: Mr. Christy pointed out that on the second page, on the Exhibit 276-G for identification, as it now stands, with three pages, has carried over onto the second page the figure of $163.17, which is apparently the total of all the charges posted on that first page over to the second page of the exhibit.

In the discussions that we had, I indicated I would allow the first page because I think that you can submit that to the jury and argue what you think it supports, and, that is, that is probably sufficient for the jury to draw an inference that that one sheet reflects the amount of money which the defendant paid; but that I would not admit any part of

the second page, and the reason, I think, is clear, because it is listed in the name of a man other than the defendant. And the same is true with respect to the third page.

Mr. Christy: May I point out—

The Court: So I will exclude—yes?

Mr. Christy: You will notice down here, this is the total of the bill. This is the total of the charges.

The Court: Yes.

Mr. Christy: And this is the balance forward. That is the 16th. In this column here, this is the date of the 17th, to indicate it was paid on the 17th. Was only paid when it is entered in the cash line here. (1153) It is an indication from this record that this account from this sheet, which is a carryover, was paid. You will notice that the carryover is put in the upper lefthand corner. The charges for that day to Mr. Douglas are also entered in that column, but you will notice that they haven't been added to this bill.

The Court: All right, which is all the more reason why the second page should not go in.

Mr. Christy: Could we restrict it just to show—

The Court: No, no. It will not be admitted any further than I have indicated. I don't know who Douglas is. I don't know what he represents in this case, but I am not going to get him in here until there is some basis shown for it. I think it may be argued from this that Costello spent $163.17. That is what admitting the second page would show, but there is no sense getting it all in the record.

Mr. Fennelly: I don't know whether your Honor understood. One of my arguments against the competency of the bill is because it is clear on the face of

the second page that the payment was made on the bill of Mr. Douglas indicating that he had taken over the account of Mr. Costello. Mr. Costello was doubtlessly there for a week, but it is clear from the face of the second bill—

(1154) The Court: Theye may be something to that.

Mr. Fennelly: —Mr. Douglas took over the payment of the bill.

The Court: That may very well be. You may inquire from the witness with respect to that whether or not he is able to tell us from that bill when that amount was paid. That is the only point here. The only point is whether Costello is to be charged with an expenditure of $163.17.

Mr. Christy: That is right.

Mr. Fennelly: That is correct.

The Court: Building up on your theory that he spent more money than reported, as indicated.

Mr. Fennelly: True.

Mr. Christy: That is right, your Honor.

The Court: You may inquire, Mr. Fennelly, about it. It may very well be that the foundation isn't laid even for the admission of this.

(End of sidebar discussion.)

(1155) (The following proceedings took place in open court within the hearing of the jury:)

Mr. Fennelly: May I inquire preliminarily, your Honor, on Government's Exhibit 276-G?

The Court: Yes, you may.

By Mr. Fennelly:

Q. On the bill, Government's Exhibit 276-G, where the name Douglass was written in pencil, when you first saw that record that was in the form it was in, was it not? A. It was, yes, just as it is there.

Q. And the first time you saw the record was when? A. About three months ago.

Q. And you were not employed at the hotel at the time this bill was made out? A. I was not, no, sir.

Q. Now under the pencil mark you say the name of Frank Costello was typed in? A. It was, yes, sir.

Q. Now on that sheet it indicates that the bill was not paid, on this first sheet, doesn't it? A. It certainly does, yes.

Q. And the amount of $163.17 was carried forward to an account in the name of Jim Douglass, isn't that right? A. It was, yes.

Q. And it appears on the account of Jim Douglass that this amount of $163.17 was paid on Douglass' bill, doesn't it? A. It appears Douglass paid it, yes.

(1156) Mr. Fennelly: I object, your Honor, to the admission of the bill.

Mr. Christy: Your Honor, may I question the witness further?

The Court: Pardon?

Mr. Christy: May I question the witness further?

The Court: Yes, surely.

By Mr. Christy:

Q. Mr. Thomsen, the amount on that first sheet is $163.17? A. It is.

Q. And is that carried forward to the second sheet? A. It certainly is, yes.

Q. And that is the balance forward under date of October 17, isn't that correct? A. It is.

Q. There were certain charges for the room on that day, on October 17, also? A. There certainly was, yes.

Q. They were not included on the bill which was paid that day, were they? A. They were not, no, sir.

Q. So, would it indicate that the bill was paid early in the day? A. I would think so, yes.

Q. Before the charges on that date were added to the bill, is that correct? A. Oh yes, yes.

Q. Now Mr. Douglass checked in on October 17, didn't he? A. He did.

Q. Is it usual for a guest to make a payment as soon (1157) as he comes to the hotel? A. Not as a rule, no.

Q. This figure carried forward from the first sheet of $163.17, were the charges against Mr. Costello for the week October 10 through October 17, weren't they? A. Through October 16.

Q. October 16. And paid on the 17th? A. Right.

Q. Could they have been paid on the 16th and credited on the 17th? A. Not hardly, no, sir.

Q. But that figure does represent Costello's charges for the week? A. They do, yes.

Mr. Christy: The Government renews its offer of the first page on 276-G.

The Court: You are not now offering the second page, as you were when you first offered it this afternoon. You are offering now only the first page.

Mr. Christy: Your Honor, the Government would also offer—

The Court: I will cut the Gordian knot. I will admit the first page but I will not admit the second and third pages.

Mr. Christy: Very well, your Honor.

The Court: Very well.

The Clerk: The first page of Government's Exhibit 276-G for identification received in evidence.

(1158) Q. Now, Mr. Thomsen, from Government's Exhibits 276 and 276-A through E, have you computed the total that was paid by Costello for his bills? A. I have, yes.

Q. And I ask you if in 1947 the amount of $545.88 was paid? A. It was, yes, sir.

The Court: What is that amount?

The Witness: $545.88.

Q. And I ask you if in the year 1948 the sum of $1407.59 was paid for the two visits in that year? A. They were, yes, sir.

Q. And from Government's Exhibit 276-G in evidence it would indicate that the charges incurred by Frank Costello for the period October 10 through October 16 amounted to $163.17, is that correct? A. That is correct, yes.

The Court: That is for '49?

Mr. Christy: In the year 1949, yes, your Honor. I am sorry.

Q. Those charges of $163.17 were paid to the hotel? A. Yes, sir.

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir, I didn't.

(1159) Q. And the amount of $163.17, that was paid on the bill of Mr. Douglass, was it not? A. It was, yes, sir. So it indicates.

Q. Now have you any records of your hotel to show who paid that bill? A. No, we have not.

Q. And who was the bookkeeper or clerk who made out the bills? A. That was before my time, sir.

Q. And you don't know? A. I do not know, no, sir.

Q. Mr. Douglass has been a guest at your hotel quite often, hasn't he? A. So I understand, yes.

Q. Now you have baths now connected with your hotel? A. We have.

Q. And formerly you didn't have, is that right? A. Formerly—

Q. When you first opened? A. When we first opened we didn't have, no, sir.

Q. And the people who were staying at your hotel would then go to public baths? A. They would.

Q. And are they maintained by the Government? A. They are.

Q. And do you know the prescribed time for people taking baths in— A. Oh yes.

Q. How long is it? A. 20 minutes in the tub.

Q. I didn't mean the number of minutes in the tub; I meant for how many days, what period of time? A. Well, (1160) there's various days, you have various courses; you have a 16, a 24, a 12, and a 6 course.

Q. And those are prescribed, are they not, by doctors? A. In some cases, yes.

Q. And you have a building there that is a medical center

where all the doctors have their offices? A. We have a medical arts buildings.

Q. Where many doctors have their offices? A. Yes.

Q. And the waters that are piped into the baths at the various hotels, that is done under a permit from the United States Government, is it not? A. It is. Department of Interior.

Mr. MacMahon: Your Honor, I don't see the relevancy of any of this.

The Court: I don't know either, but it is cross examination and I will allow it.

Q. And there is a veterans hospital there where they give treatments?

The Court: Now on that I will save a little time. That is certainly irrelevant. It is not contended that the defendant here was at that place.

Mr. Fennelly: That is all.

The Court: All right.

Mr. Christy: May we substitute photostats for (1161) these exhibits?

The Court: I beg your pardon?

Mr. Christy: May we substitute photostats for these exhibits?

The Court: Yes.

Mr. Christy: Thank you, Mr. Thomsen.

The Witness: Okay, sir.

(Witness excused.)

Mr. Christy: The Government calls Eugene Huppenbauer.

Eugene Huppenbauer, Sr.—for Government—Direct

EUGENE HUPPENBAUER, SR., called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Huppenbauer, where do you live? A. New Orleans.

Q. Whereabouts in New Orleans? A. 1828 General Pershing Street.

Q. Where are you employed, sir? A. I beg your pardon?

Q. Where are you employed, sir? A. At the Roosevelt Hotel, in New Orleans.

Q. Are you the auditor of the Roosevelt Hotel? A. Yes, sir.

Q. For how long have you been at the Roosevelt Hotel? (1162) A. 36 years.

Q. Do you know if, according to your records, Frank Costello and his wife, Loretta Costello, were guests of the Roosevelt Hotel? A. Yes, sir.

Mr. Christy: Your Honor, I show to Mr. Huppenbauer the exhibits marked for identification this morning.

The Court: Let the record indicate what they are.

Mr. Christy: The exhibits are 271, 271-A through 271-H.

The Court: May I see them, if you don't mind?

(Witness hands to the Court.)

The Court: Thank you (returning exhibits to witness).

Q. Mr. Huppenbauer, you produced these records in

accordance with a subpoena served on the Roosevelt Hotel, have you? A. Yes, sir.

Q. And are these all the records that you could find— A. Yes, sir.

Q. —relating to the accounts of Frank and/or Loretta Costello? A. That is right.

The Court: Could you tell us generally what period they cover?

The Witness: One of these cards covers from the (1163) period of '36 through—

Q. That is a control card? A. A control card.

Q. That is Government's Exhibit 271 for identification. And will you tell us what 271-A for identification is? A. This other one covered the control card from October '36, also, to 1950, the control card.

The Court: Let me see them. May I see the others, please?

Between them then, they cover the period beginning in April 1936 through some date in 1950, is that correct?

The Witness: That is correct, sir.

The Court: Very well.

Q. Now referring to Government's Exhibit 271-B through Government's Exhibit 271-II for identification, are those of the registration cards, folio sheets, and City ledgers which you were able to find relating to the accounts of Frank and/or Loretta Costello at the Roosevelt Hotel? A. Yes, sir, that's the records.

Q. And what is the date on Government's Exhibit 271-B for identification? A. Take the registration card, it shows the date of October 20, 1937, arrival date.

Q. And referring to Government's Exhibit 271-II for identification? A. It shows arrival date as of December 20, (1164) 1949.

Q. And all these others, 271-C through 271-HH for identification, are the registration cards, folio sheets and City ledgers for the period in between those two dates that you have just given us? A. Yes, sir.

Mr. Christy: Your Honor, the Government offers so much of Government's Exhibit 271 for the period from October 18, 1937 through December 1949, so much of Government's Exhibit 271-A for identification as covers the period from October 18, 1937 through December 31, 1949, and Government's Exhibit 271-B through Government Exhibit 271-II for identification in evidence.

We restrict the offer on Government's Exhibit 271-II for identification as covers the period through December 31, 1949.

The Court: I have so understood your offer, yes. In other words, nothing beyond that date is included in your offer?

Mr. Christy: That is right, your Honor.

The Court: Very well. Do you propose to submit photostatic copies?

Mr. Christy: Yes, your Honor.

The Court: You may do so, and block out anything not included in the offer.

(1165) Mr. Christy: Yes, your Honor.

(A pause.)

The Court: Mr. Christy, I suggest, if you have any subsequent witness for whom you will have documents, that you might be getting them marked

by the clerk now while counsel is examining these.

Mr. Christy: I have only photostats of the exhibits to be introduced through the next witness but they will be substituted at the close of his testimony.

The Court: Oh, he has what will constitute the exhibit?

Mr. Christy: The exhibits.

The Court: Very well.

He is here, I take it?

Mr. Christy: Yes, he is.

The Court: Couldn't you get them and bring them in and have them marked?

Mr. Christy: Yes, your Honor.

(A pause.)

The Court: Are you ready?

Mr. Christy: Yes, sir.

I ask to have these marked for identification as Exhibits 277, 277-A through 277-E for identification.

(Marked Government's Exhibits 277, 277-A through 277-E for identification, respectively.)

(1166) Mr. Christy: May the record note that Exhibit 277-E for identification contains 11 sheets.

And these may be marked.

(Marked Government's Exhibits 277-F and 277-G for identification.)

(A pause.)

Mr. Fennelly: Those pertaining to Mrs. Costello I object to as irrelevant and immaterial. No objection to those relating to Mr. Costello.

The Court: Very well. The objection is overruled. All of the exhibit.

(Marked Government's Exhibits 271 for identification through 271-H in evidence.)

Mr. Christy: May I begin questioning the witness on these and have the clerk mark them at the recess, to save a little time?

The Court: Yes—I think we might just as well take our recess now.

Mr. Christy: Very well, your Honor.

The Court: They may be marked during that period.

(Short recess.)

(1167) Q. Now, Mr. Huppenbauer, Government's Exhibit 271-B is a registration card and folio sheet for Frank Costello. From this registration sheet, did he check in on October 20, 1937 and check out on October 27, 1937? A. Yes.

Q. And was the bill $42.23? A. $42.23, yes.

Q. And was it transferred to Kastel? A. Yes.

Q. From Government's Exhibit 271-C in evidence, is that a registration card for Mrs. Frank Costello checking in the hotel on April 5, 1938 and leaving on April 19, 1938; is that correct? A. Yes, that is correct.

Q. And do the folio sheets there cover the period from April 6th through April 19, 1938? A. Correct.

Q. And was the total bill $409.64? A. Correct.

Q. And is there an indication that that was charged to Kastel? A. Yes, charged to Mr. Kastel.

Q. Now, also part of Government's Exhibit 271-C is there a registration card for Frank Costello showing that he came in on April 12, 1938 and left on April 17, 1938? A. Yes, sir.

Q. And his bill was included in Mrs. Costello's bill? A. Yes, sir.

Q. And the entire amount was transferred to Kastel, (1168) is that correct? A. Yes, sir.

Q. Government's Exhibit 271-D in evidence, is that a folio sheet recording a visit of Frank Costello when he checked into the hotel on November 4, 1939 and left on November 7, 1939? A. Yes, sir.

Q. And the amount of that bill was $20.80, is that correct? A. Yes, sir.

Q. And that was also transferred? A. Yes, sir.

Q. Government's Exhibit 271-E is a registration card for Frank Costello showing he checked into the hotel on February 4, 1940 and checked out of the hotel on February 7, 1940? A. Yes, sir.

Q. Is that correct? A. That is correct.

Q. And what was the room rate as indicated on that registration card? A. $18 a day.

Q. And do you have any folio sheets to go with that? A. No, sir, I was unable to locate folio sheets for this card.

Q. According to that registration card, now many days was he there? A. He was there for three days, $18 a day, total $54.

Q. And is there any indication on there that that was paid by anybody else? A. No, sir.

Q. It was paid by Frank Costello? A. By Mr. (1169) Costello.

Mr. Fennelly: I object to that unless there is some indication that it was, your Honor.

The Court: And the witness, as I understood it, merely said that there was no indication that it was paid by anybody else, and the observation by the examiner was that it had been paid by Frank Costello.

Was that a question or a statement?

Mr. Christy: It was a question, your Honor.

The Court: Is there anything there by which you can tell by whom it was paid?

The Witness: No; only the guest, Mr. Costello—there is usually a notation there when it is paid by anyone else.

The Court: It is your practice to put a notation on when it was paid by anyone else?

The Witness: Yes, sir.

The Court: There is no such notation on your record?

The Witness: No such notation.

Q. Is that the general rule, that where the bill is transferred there is a notation? A. Yes.

The Court: He just said that.

Q. Government's Exhibit 271-F in evidence, is that a registration card? A. Registration card.

(1170) Q. For Mrs. Costello and— A. Mrs. Frank Costello and Mr.

Q. Frank Costello? A. Frank Costello.

Q. On October 27, 1942? A. Yes, sir.

Q. And on what date did they check out? A. November 13, 1942.

Q. Were you able to find any folio sheets to go with

that registration card? A. No, sir, I was unable to find the folio sheet on this card.

Q. Does that indicate the room rent? A. It indicates the room rent that, first, it was Room 530 at $5.50 a day, then later it was transferred to Room 622 and '24 at $14 a day, and the rate was changed then to $16 a day.

Q. And for how many days were they there? A. Well, they were there for 17 days from October 27th to November 13th.

Q. Does that indicate that that bill was paid by anybody else? A. No, sir.

Q. Does it indicate what date they moved into Room 622 and 624? A. No, sir, it doesn't indicate.

Q. Would you have any idea when it might be? A. No, sir.

Q. Look at the registration card. A. No, sir.

Mr. Fennelly: I object to that.

(1171) The Court: Is there anything on the card which would indicate to you when they changed from the room at one rate to the room at a higher rate?

The Witness: It would be on two folios.

The Court: Yes. But on the card, which is the only record you have, you cannot tell?

The Witness: That is right.

The Court: Very well.

Q. Government's Exhibit 271-C in evidence is a registration card for Mrs. Frank Costello on which she checked in on February 12, 1943 and checked out on February 14, 1943, is that correct? A. That is correct.

Q. And what was the rate of the room that she got? A. The rate of the room was $4 a day.

Q. And she was there for two days, is that correct?

A. She was there for two days. It would be a total of $8 on this account.

Q. Government's Exhibit 271-H in evidence, is that a folio sheet for Mrs. Frank Costello on which the first entry is March 27, 1943? A. Yes, sir.

Q. And the last entry is April 9, 1943? A. Yes, sir.

Q. Does it indicate there on the first sheet of Government's Exhibit 271-H how long Mrs. Costello was there? (1172) A. On this card it shows that she was supposed to be there for three weeks.

Q. She checked in on March 27, 1943, is that correct? A. That is March 27, 1943.

Q. I refer you to Government's Exhibit 271-A in evidence which is a control card, and I ask you if that visit is recorded there? A. It is reported on this card here that she checked in on March 23, 1943 and checked out on March—April 18, 1943.

(1173) Q. But this folio sheet, Government's Exhibit 271-H, only runs to April 9, 1943? A. That is correct. Was unable to find the other part of the folio.

Q. Does it indicate what the charges were up through April 9, 1943? A. $98.12.

Q. On the control sheet she left there on the 18th, April 18th— A. That is right.

Q. —1943? A. That is right.

Q. So that would be eight additional days—nine days, but she would be paying for eight days, is that correct? A. That is correct.

Q. What was the rate of the room? A. $6 a day. That would be a total of $48.

Q. So she would pay $48— A. Yes.

Q. —minimum.

Mr. Fennelly: I object to the fact she paid it. Maybe somebody else paid it.

The Court: I don't know whether she did or not.

Mr. Christy: May I continue my examination?

The Court: What you mean is—

The Witness: On the card here—

The Court: No. What you mean is that if she stayed eight days, the charge would be $8 more than what (1174) your folio showed?

The Witness: Yes.

The Court: Does the folio sheet show who paid it?

The Witness: No, not this card.

The Court: Is there any indication on there, according to your practice, to indicate that somebody or anybody other than the guest paid it?

The Witness: No, sir, only on this card, but doesn't indicate anything; on the control sheet, it doesn't indicate.

Mr. Fennelly: As I understand, if I understand correctly, the bill ends at April 9.

The Court: The paper you have in your hand?

Mr. Fennelly: That is right.

The Court: But the witness says that he has another record kept in the regular course of business, presumably, which shows that the guest stayed there some eight days longer, and at the rate of $6 a day, the charge for the additional eight days would be $48. He says that a folio sheet which would ordinarily record that has been sought for but not found.

Q. This was carried forward to another folio sheet? A. To another folio, which was 58732, and we were unable to locate the folio.

(1175) Q. And the charges up through April 9, April 9, 1943, were $98.12? A. Correct.

Q. I show you Government's Exhibit 271-I in evidence and ask you if that is a registration card for Mrs. Frank Costello? A. Yes, sir.

Q. In which she checked into the hotel on May 14, 1943 and left on May 19, 1943? A. Correct.

Q. And the accompanying folio sheet shows total charges of $54.40, is that correct? A. Correct.

Q. Is there any indication that this was transferred? A. No, sir. It was paid by the guest.

Q. I show you Government's Exhibit 271-J in evidence and ask you if that is a registration card for Mrs. Frank Costello in which she checked into the hotel on May 29, 1943 and left on June 2, 1943? A. Correct.

Q. And does the accompanying folio sheet show total charges of $74.33? A. Correct.

Q. Is there any indication that that was paid by anybody else? A. No, sir. Only by the guest.

Q. Will you keep your voice up just a little, Mr. Huppenbauer? A. Yes, sir.

Q. I show you Government's Exhibit 271-K in evidence and ask you if that is a registration card for Frank Costello in which he checked into the hotel on June 28, 1943 and left (1176) on July 2, 1943? A. Yes, sir, correct.

Q. And does the accompanying folio sheet show charges of $37.01? A. Correct.

Q. On July 2, 1943? A. Correct, sir.

Q. Is there any indication that that was paid by anybody else? A. No, sir.

Q. I show you Government's Exhibit 271-L and I ask you if that is a folio sheet for Mrs. Frank Costello in which she checked into the hotel on October 30, 1943 and left on November 10, 1943? A. Well, it doesn't show she left on 10th because there is another folio. Maybe another date on the control sheet. The control sheet shows she left

on November 21, 1943. There is another part of the control that is missing also.

Q. Going back a minute, Mr. Huppenbauer, this folio sheet shows that she checked in on October 30, 1943, is that correct? A. That is correct.

Q. Referring to Government's Exhibit 271-A in evidence, the control sheet, where it shows that she checked in on September 30, 1943, is that a typographical error? A. That is a typographical error because this is the original control sheet showing—folio sheet, showing the exact date she checked in.

The Court: The witness says this was his control (1177) sheet. He is referring to what?

Mr. Christy: Government's Exhibit 271-L.

The Witness: Government's Exhibit 271-L.

Q. The last entry on Government's Exhibit 271-L is for November 10, 1943? A. Yes, sir.

Q. And at that time the total charges amounted to $152.38, is that correct? A. Correct.

Q. Again referring to Government's Exhibit 271-A, does it indicate on what date she checked out of the hotel? A. 271-A indicates she checked out on the 21 of—November 21, 1943.

Q. So that would be an additional ten days?

Mr. Fennelly: Just a minute. I object to the form of the question.

The Court: Overruled.

Q. The control sheet, Government's Exhibit 271-A indicates she checked out on November 21, 1943, is that correct? A. Correct.

Q. The last entry on Government's Exhibit 271-L in evidence is November 10, 1943? A. Correct, sir.

Q. Were there other folio sheets which you were unable to find relating to this visit? A. Yes, sir. The number will be 36713.

Q. At the time she checked out of the hotel what was the room rate per day? A. $12 a day.

(1178) The Court: Was it any different at any time during the stay?

The Witness: Yes, sir. At the beginning was $6 a day. She had Room 1126. Then she was changed to a suite on November 9, 1943, Room 1076 and 1078, and the rate was $12 a day on that suite.

Q. And again from Government's Exhibit 271-A, on which she checked out on the 21, she was there an additional ten days, is that correct? And you were unable to find the folio sheets relating to the charges for those additional ten days, is that correct? A. That is correct, sir.

Q. Again referring to Government's Exhibit 271-L in evidence, the room rate on November 10 was $12 a day, is that correct? A. That is correct, sir.

Q. And I believe you testified that she was there an additional ten days? A. Yes, sir.

Q. Referring to Government's Exhibit 271-M, I ask you if that is a registration card by—

Mr. Christy: Withdraw that.

Q. Referring to Government's Exhibit 271 in evidence, I ask you if that is a folio sheet for the visit of Mr. and Mrs. Frank Costello—

The Court: You mean 271-M, do you not?
Mr. Christy: 271-M, yes, your Honor.

(1179) Q. —for a visit on which they checked into the hotel on January 6, 1944? A. Yes, sir.

Now, on this folio, Exhibit No. 271-M, the first part of this folio, No. 55244, was unable to locate, but the date on this one indicated that they checked in on the 6th—January 6, 1944, and the control sheet also.

Q. The control sheet; by that you are referring to Government's Exhibit 271-A, is that correct? A. That is correct.

Q. And that also shows that they checked in on January 6, 1944? A. Correct.

Q. Does Government's Exhibit 271-M in evidence indicate what the total charges were for that visit? A. They were $348.70.

Q. Is there any indication that that was paid by anybody other than Frank Costello? A. No, sir.

Q. It was paid on January 22, 1944, is that correct? A. That is correct, sir.

Q. Referring to Government's Exhibit 271-N, I ask you if that is a registration card for Frank Costello? A. Yes, sir.

Q. In which he checked into the hotel on April 12, 1944 and checked out on May 2, 1944? A. Yes, sir.

Q. Referring to the accompanying folio sheet, (1180) does it indicate that he checked out on May 2, 1945? A. Yes. Well, that is an error. The machine made an error. Should have been '44.

Q. Should have been 1944? A. Correct.

Q. Referring to Government's Exhibit 271-A in evidence, does it indicate that he checked out on May 2nd— A. Yes.

Q. —1944? A. Correct.

Q. Does that indicate what the charges were for that visit? A. Amounted to $10.40.

Q. Was that transferred? A. Yes, sir, transferred to Mr. Kastel's account.

Q. Referring to Government's Exhibit 271-O, is that a folio sheet for Frank Costello? A. Yes, sir.

Q. In which he checked into the hotel on July 16, 1944? A. Yes, sir.

Q. And departed on July 22, 1944? A. Yes, sir.

Q. And the total bill as paid by Frank Costello on July 22, 1944 amounted to $132.24? A. Correct, sir.

Q. I show you Government's Exhibit 271-P in evidence and ask you if that is a registration card for Frank Costello in which he checked into the hotel on November 1, 1944 and checked out on November 5, 1944? A. Correct, sir.

Q. And was a bill in the amount of $72—

(1181) Mr. Christy: Withdraw that.

Q. Was a bill in the amount of $67.22 paid by Frank Costello? A. Yes.

Q. On November 5, 1944? A. Yes, sir.

Q. I show you Government's Exhibit 271-Q and ask you if that is a registration card for Mrs. Frank Costello in which she checked into the hotel on January 22, 1945 and checked out on February 16, 1945? A. Correct, sir.

Q. And do the accompanying folio sheets show the amount of the bill as was transferred on February 15, 1944—'45— A. Yes, transferred to Mr. Phil Kastel's account.

Q. And it was transferred on February 15, 1945? A. 15, 1945.

Q. In the amount of $617.44? A. Correct.

Mr. Christy: Your Honor, I have here Government's Exhibit 147 in evidence, which is a letter to Frank Costello from Charles Murphy, and was part of the work papers introduced through Mr. Murphy.

The Court: Yes?

Mr. Christy: May I read this letter to the jury?

The Court: Yes.

Mr. Christy: This is a letter dated March 1, 1945, addressed to Mr. Frank Costello, 115 Central Park (1182) West, New York, New York.

"Dear Mr. Costello: Enclosed please find cashier's check No. 46339 of Louisiana Savings Bank & Trust Company in the amount of $5,007.06, dated March 1, 1945. This check represents your 22½ per cent share of the March distribution of $5,625 less a deduction of $617.44 which represents the hotel bill of Mrs. Costello. Mr. Kastel paid this bill and I refunded him the $617.44 out of the March distribution."

Q. Referring you to Government's Exhibit 271-R, I ask you if that is a folio sheet for Mrs. Frank Costello, in ~~which~~ she checked into the hotel on April 7, 1945? A. Correct.

Q. And checked out on April 24, 1945? A. Correct.

Q. And was— A. April 20.

Q. April 20, 1945?, A. That is right.

Q. And was there a bill in the amount of $499.49 payable? A. $499.44, correct.

Q. Forty-nine? A. $499.49.

Q. $499.49? A. $499.49.

Q. And does that indicate who paid this bill? A. Has notation that Mr. Kastel took care of this bill.

(1183) Q. And it was paid on April 20? A. April 24, 1945.

Q. Referring to Government's Exhibit 271-S, is that a folio sheet for a visit by Frank Costello in which he checked into the hotel on April 12, 1945 and checked out on April 17, 1945? A. Correct, sir.

Q. And was there a bill there in the amount of $32.55? A. Correct.

Q. Does it indicate that that was paid by anybody other than Costello? A. A memorandum on here, transfer to Room 1222 and '4 Costello.

Q. Costello? A. Costello, yes.

Q. So that Costello paid the bill? A. He evidently paid the bill.

Q. I show you Government's Exhibit 271-T in evidence and I ask you if that is a registration card for Frank Costello and family in which they checked in on May 7, 1945 and checked out on May 9, 1945? A. Correct.

Q. And does that indicate what the room rent was? A. $33 a day.

Q. And they were there for two days? A. Two days, sir.

Q. The bill would have been a minimum of $66? (1184) A. Yes, sir.

Q. Does it indicate that it was paid by anybody other than Costello? A. No, sir.

Q. I show you Government's Exhibit 271-U in evidence and ask you if that is a registration card for Mrs. Frank Costello in which she checked into the hotel on October the 9th, 1945 and checked out on November the 5th, 1945? A. Yes, sir.

Q. Now, the accompanying folio sheet shows an opening entry for October the 7th, is that correct? A. That is correct.

Q. And at the top of the first folio sheet of Government's Exhibit 271-U it shows that she checked in on October 7th, is that correct? A. The bill was made on October 7th, yes, sir.

Q. And the pencil notation on the registration card which says October the 9th, would be a type—would be in error, is that correct? A. Yes, sir.

Q. Now, does Government's Exhibit 271-U on the accompanying folio sheet show the amount of the bill for this visit? A. It amounted to $768.91.

Q. And it was paid on November 4, 1945? A. Yes, sir.

Q. Yes? A. November 1945.

Q. 1945? A. 1945.

(1185) Q. Does it indicate that it was paid by anybody other than the Costellos? A. No, sir.

Q. Now, referring to Government's Exhibit 271-V in evidence, I ask you if that is a registration card for Frank Costello? A. Yes, sir.

Q. On which he checked into the hotel on September 13, 1945, and I asked you if there is a pencil notation which reads 9/19/46 on there? A. Yes, sir.

Q. That is an error, is it not? A. That is an error. According to the original folio of No. 271-B, he checked in on September in on September 13, 1945.

Q. And if you will look at the registration card you will see that he did check in, the stamp there indicates, September 13, 1945, is that correct? A. Yes, sir.

Q. Now, the accompanying folio sheets on this indicate charges for the period from September 13th, 1943—

Mr. Fennelly: Forty when?

Mr. Christy: I beg your pardon.

Q. —1945 through March 11, 1946, is that correct? A. Yes, sir, from the folio, it it correct.

Q. And does it show what room he occupied? A. Yes, sir. He occupied Mr. Phil Kastel's room, 560 and '62.

(1186) Q. From those folio sheets attached to Government's Exhibit 271-V, does it show a payment on November 2, 1945 of $6.92 by Frank Costello? A. Yes, sir, 692.

Q. Now, referring to Government's Exhibit 271-W, is that a registration card for Frank Costello and wife in which they check in on December 20, 1945 and checked out on January 10—January 9, 1946? A. Yes, yes, sir.

Q. Now— A. That should be the 10th.

Q. January 10th? A. Yes, that should be the 10th.

Q. Now, there are no accompanying folio sheets with that registration card—

Mr. Fennelly: Excuse me, I did not mean to interrupt your examination.

(Mr. Fennelly looked at an exhibit at the witness stand.)

The Court: All right.

Q. There are no accompanying folio sheets, but will you tell us what these sheets are attached to the registration card? A. That represents a city ledger account. When Mr. Costello had checked out of the hotel he didn't pay the account at the time, he had it transferred to the city register account, and the bill was mailed to him to his New York address.

(1187) Q. Does that indicate when that bill was paid? A. The bill was paid on January 14th, 1946.

Q. Was that bill that was paid on January 14, 1946 in the amount of $608.97? A. Correct.

Mr. Christy: Would your Honor excuse me for just a minute while I look at one of these records?

The Court: Yes.

Q. Referring to Government's Exhibit 271-X in evidence, I ask you if that is a registration card for Frank Costello in which he checked into the hotel on March 3, 1946? A. Yes, sir.

Q. And what is the room number on that registration card? A. Room 560, which is Mr. Kastel's room.

Q. Attached to the registration cards are various folio sheets, and I ask you if they show on April 1st, 1946 a payment by Frank Costello of $3.92? A. April 1st, yes, sir, $3.92.

Q. I ask you if Government's Exhibit 271-X in evidence also indicates a payment by Frank Costello on September 3, 1946 of $30.19? A. Yes, sir.

Q. I show you Government's Exhibit 271-Y in evidence and I ask you if this a city ledger sheet which is part of the city ledger sheet attached to Government's Exhibit 271-W? A. Yes, sir.

Q. Which shows that Frank Costello checked in on (1188) April 5, 1946? A. Yes, sir.

Q. And that a bill was rendered on April 21, 1946 and was carried on the city ledger sheet? A. Yes, sir.

Q. And when was that bill paid? A. That bill was paid on April 26, 1946.

Q. And how much was it? A. $496.60.

Q. $496.60 on April 26, 1946? A. Yes, sir.

Q. I show you Government's Exhibit 271-Z and ask you if those are folio sheets for Mrs. Loretta Costello in which she checked into the hotel on September 11, 1946? A. Yes, sir.

Q. And checked out on September 16, 1946? A. Yes, sir.

Q. And that the bill of $65.[illegible] was paid on September 16th? A. Yes, sir.

Q. Is there any indication that was paid by anybody other than Mrs. Costello? A. No, sir.

Q. I show you Government's Exhibit 271-AA in evidence and ask you if that is a registration card for Mrs. Frank Costello? A. Yes, sir.

Q. In which she checked into the hotel on October 25, 1946? A. Yes, sir.

Q. And checked out on November 6, 1946? A. Yes, sir.

(1189) Q. And was a bill paid on November 6, 1946 in the amount of $383.48? A. Yes, sir.

Q. Is there any indication that it was paid by anybody other than Mrs. Costello? A. No, sir.

Q. I show you Government's Exhibit 271-BB in evidence and ask you if that is a registration card for Mrs. Frank Costello in which she checked into the hotel on December 22, 1946? A. Yes, sir.

Q. And left on January 2, 1947. A. Yes, sir.

Q. From Government's Exhibit 271-DD, does it indicate there was a payment on December 30, 1946 in the amount of $169.56? A. Yes, sir.

Q. And this was paid by Mrs. Costello? A. Yes, sir.

Q. And a payment on January 2, 1947 of $113.20? A. Yes, sir.

Q. Does the folio sheet No. 70072 from Government's Exhibit 271-BB in evidence indicate that Frank Costello was there at that time, that would be in December, 1946? A. Yes, sir, from this folio it does.

Q. And the first entry on that one is December 26, 1946? A. Yes, sir.

Q. I show you Government's Exhibit 271-CC and ask you if that is a registration card for Mr. and Mrs. Frank Costello? A. Yes, sir.

(1190) Q. In which they checked into the hotel on April 5, 1947, is that correct? A. From this card, it indicates that Mrs. Costello checked in on that date because the rate was $20 a day, and later on Mr. Costello came in and he checked in on the April 10th, the rate was raised $2 more.

Q. So he came in on April 10, 1947? A. Yes, sir.

Q. Now, does that Government's Exhibit 271-CC indicate that a bill of $297.70 was paid on April 13, 1947? A. Yes, sir.

Q. Does it indicate that it was paid by anybody other than Costello? A. No, sir.

Q. Government's Exhibit 271-DD, I ask you if that is a registration card for Mr. and Mrs. Frank Costello? A. Yes, sir.

Q. In which they checked into the hotel on December 21, 1947? A. Yes, sir.

Q. And checked out on April 15, 1948? A. Yes, sir.

Q. Does Government's Exhibit 271-DD in evidence indicate that the amount of $318.09 was paid on January 2, 1948? A. Yes, sir.

Q. Is there any indication that it was paid by anybody other than Costello? A. No, sir.

Q. I show you Government's Exhibit 271-EE and I (1194) ask you if that is a registration for Mrs. Frank Costello in which she checked into the hotel on April 8, 1948? A. Yes, sir.

Q. And checked out on April 15, 1948? A. Yes, sir.

Mr. Fennelly: My recollection is that it said '49, your Honor.

The Witness: They had an error on the ledger sheet of '49. The original registration card for '48 up there (indicating). The machine was out of order when they made '49. The original cards show '48 also.

Q. The registration card shows they checked in on April 8, 1948? A. Yes, sir.

Q. The first entry on the accompanying folio sheet shows April 8, 1949? A. Yes, sir.

Q. That was a typographical error? A. Yes, sir.

Q. And that Mrs. Costello checked out on April 15, 1948. And does it indicate that there was a bill paid in the amount of $284.94 on April 15, 1948 by Mrs. Costello? A. Yes, sir.

Q. I show you Government's Exhibit 271-FF. Is that a registration card for Mr. and Mrs. Frank Costello in which they checked into the hotel on September 12, 1948? A. Yes, sir.

Q. And checked out on September 15, 1948? (1192) A. Yes, sir.

Q. And the bill in the amount of $67.32 was transferred to Mr. Phil Kastel? A. Yes, sir.

Q. Government's Exhibit 271-GG, is that a registration card for Mrs. Frank Costello under the date of September 23, 1948? A. Yes, sir.

Q. And that she checked out on September 25, 1948? A. Yes, sir.

Q. There is a pencil notation on the registration card showing September 30. Is that an error? A. That is an error, but the original ticket was attached when it was paid on September 25, and the ledger sheet also shows September 25.

Q. Does this Government's Exhibit 271-GG indicate a payment of $201.53 on September 25, 1948 by Mrs. Frank Costello? A. Yes, sir.

Q. I show you Government's Exhibit 271-HH. Is that a registration card for Mr. and Mrs. Frank Costello in which they checked into the hotel on December 21, 1948? A. Yes, sir.

Q. And checked out on January 7, 1949? A. Yes, sir.

Q. And does Government's Exhibit 271-HH in evidence indicate that the amount of $1,867.12 was paid on January 7, 1949? A. Correct, sir.

(1193) Q. And is there any indication that it was paid by anybody other than Frank Costello? A. No, sir.

Q. Finally I show you Government's Exhibit 271-II in evidence and ask you if that is a registration card for Mrs. Frank Costello in which she checked into the hotel on December 20, 1949? A. Yes, sir.

Q. And checked out of the hotel on January 7, 1950? A. Yes, sir.

Q. Referring again to Government's Exhibit 271-FF in evidence, which is a registration card for Mrs. Frank Costello, in which she checked in on October 27, I belive you testified that she was there for a period of 17 days, according to the registration card? A. Yes.

Q. And that there were three room rates recorded on that registration card, $5.50, $14 and $16? A. Yes, sir.

Q. So the minimum rate that she would have paid in that year was 17 days at $5.50 a day, is that correct? A. Yes, sir.

Q. That would have been the minimum rate that she would have paid for that visit? A. Yes, sir.

Q. Referring to Government's Exhibit 271-R, that is a folio sheet showing that Mrs. Frank Costello checked in on April 7, 1945 and left on April 24, 1945—April (1194) 20, 1945, and Government's Exhibit 271-S is a registration card for Frank Costello— A. Ledger sheet.

Mr. Christy: I withdraw it.

Q. Government's Exhibit 271-S is a folio sheet for Frank Costello, showing that he checked in on April 12, 1945 and departed on April 17, 1945, is that correct? A. Yes, sir.

Q. And that the total bill was $32.55? A. Yes, sir.

Q. That visit of Frank Costello's was between that period that Mrs. Costello checked in and the time she checked out, is that correct? A. Yes, sir.

Q. And that $32.55, which is the total of Frank Costello's bill, was transferred to Mrs. Costello's bill, is that correct? A. Yes, sir, on the 17th of April 1945.

Q. So it was included in Mrs. Costello's bill? A. Included in Mrs. Costello's bill.

Q. And the total of that bill, from Government's Exhibit 277-1—

Mr. Christy: Withdraw that.

Q. —271-R, of $499.49, was transferred to Mr. Kastel? A. 499? Mr. Kastel, yes. Yes, Mr. Kastel took care of the bill.

(1195) Q. That was that figure? A. $499.49.

Q. That included Frank Costello's bill? A. Yes, $32.55.

The Court: It is now 4.30. I think you probably need a rest as well as the rest of us. So, we will adjourn now until tomorrow morning at 10.30.

However, I suggest that if you have any large amounts of exhibits, maybe you might be able to get started with the Clerk a little earlier and get them marked.

Mr. Christy: Very well.

Now, ladies and gentlemen, we will adjourn until 10.30 tomorrow morning. In the meantime, remember the instructions that you have been getting all along: Don't talk about the case among yourselves, or with anybody else, surely. Keep your minds completely open until all the evidence is in.

10.30

(Jury retires.)

Mr. MacMahon: Your Honor, we have a couple of very brief matters to take up with the Court.

Mr. Christy: Thank you, Mr. Huppenbauer. Will you come back tomorrow at 10.30?

(Witness excused.)

(1196) The Court: Yes.

Mr. MacMahon: Your Honor, at this time I desire to submit a memorandum in connection with Exhibits 218, 219 and 220, which you will recall were the judgments in which we offered in evidence the other day.

The Court: Very well.

Mr. MacMahon: And also a memorandum on the attorney-client privilege, which I think we will be involved with tomorrow.

The Court: Very well.

As I recall the Holland case, the entry of the judgment that was discussed there was not a judgment in a tax deficiency, was it?

Mr. MacMahon: No, your Honor, you are right.

The Court: You see, that is the problem that troubles me in this case. You have here a man charged with having wilfully attempted to evade a tax for certain years and in connection with that, because it has some probative force, you attempt to offer documents, each of which indicates that in prior years, pretty far back—what, around 1931, or even earlier than that?

(1197) Mr. MacMahon: 1926 through 1929.

The Court: 1926 through 1929.

Mr. Fennelly: And 1931 and 1932.

Colloquy

The Court: (Continuing) His tax relations or his tax affairs with the Government were in such condition that the Government had to sue him for it. I realize that that has some probative value from which you might argue that the jury could and should, you would say, draw the inference that he was indigent at that time and use that as a basis for asserting and helping to build up what you claim his net worth was in 1927, which is your starting year; and it may very well be so, but the difficulty with it, as I see it, is that you are getting before the jury the fact that this man, now charged with tax evasion, has always been juggling around with his taxes, and I think probative value is overcome by the prejudicial feature, and I think that the fact that you have already established through the witness Murphy, I think, that for the years 1926 and so on there were deficiencies which ultimately were not paid up until 1947, you have before the jury now all that you need for the purpose of establishing the net worth starting point.

That is the whole purpose that I have in excluding it. I think that the danger, the prejudice, the possible unfair prejudice in this case, overcomes any (1198) materiality that it might otherwise have.

Mr. MacMahon: Could we limit our offer so as to take out of it that part of it which relates to taxes? Our only purpose is to show this outstanding judgment. Could we eliminate that part of it which relates to the fact that it is a judgment for delinquent taxes?

The Court: Don't you have it in already through Murphy that in those years there were deficiencies in taxes and, indeed, that in subsequent years there were impositions of penalties and interest which were not cleared up until 1947?

It just seems to me you are adding something which you don't need. Maybe I am wrong about that.

Mr. MacMahon: No, your Honor. If your Honor feels strongly about it—

The Court: No—well, I only feel strong about assuring every defendant a fair trial.

Mr. MacMahon: I am sure of that.

The Court: That is the only strength of feeling I have, and I think that all the facts which you will desire to urge the jury to consider in drawing their inference are already in appropriately, and I think to put it in additionally this way, with the prejudice that I think it would undoubtedly carry, would constitute error, which (1199) I think we are all anxious to avoid.

Mr. MacMahon: Indeed we are, your Honor.

The Court: Very well. All right. So that that disposes now of the memorandum with respect to Exhibits—what are they, 218, 219 and 220?

Mr. MacMahon: 218, 219 and 220.

The Court: Very well. Having considered it, I sustain the ruling which I have heretofore made.

All right. Very well.

Mr. Delaney: Your Honor, there is one more question.

The Court: Only one?

Mr. Delaney: I think so.

The other night, I believe it was Thursday, after the court session, the Government called to your attention the fact that the warden of the federal correctional institution at Milan, Michigan, had returned certain interrogatories, and I have here those interrogatories, which we requested from the clerk, and I would like to tell Mr. MacMahon that we intend, in

accordance with the order we have, to return them to the warden so he can fulfill his function of taking the interrogatories.

The Court: That is all? You just wanted to make the record clear on that?

Mr. Delaney: Yes. I would also like, if the (1200) Court please, to just mark as Court's exhibits a copy of two—

The Court: Wait.

Mr. Delaney: —telegrams which were sent to the warden and referred to the other night, or as our exhibits.

The Court: Mark them your own exhibits.

Mr. Seymour: If your Honor please, may we inquire, to determine whether there are other—

Mr. Delaney: Those are for identification only.

The Court: Yes.

Mr. Seymour: —communications which may be relevant on this, which we might mark at a later date to complete the record?

The Court: I don't understand your question. Are you asking are there others or are you asking, if there are others, may you mark them?

Mr. Seymour: May we have that permission?

The Court: Yes, surely.

(Marked Defendant's Exhibits MM and NN for identification.)

The Court: (To the clerk) You might make a note they relate to the matter of interrogatories.

I think there is only the one set. Isn't that so, Mr. Delaney?

(1201) Mr. Delaney: That is right.

The Court: Only the questions of the one witness?

Mr. Delaney: That is right.

The Court: Has it been ascertained where he is now?

Mr. Delaney: At luncheon today I was advised that he is at Milan, Michigan, in the federal correctional institution.

The Court: All right.

(Adjourned to April 27, 1954, at 10.30 o'clock a.m.)

(1202) New York, April 27, 1954;
10.30 o'clock a.m.

Trial continued.

(The following proceedings were held in the absence of the jury.)

The Court: Give this to Mr. Christy, please, Mr. Rexrode.

The Clerk: Yes, sir.

The Court: Yes, Mr. Fennelly?

Let the record show now that what we are taking up now is being taken up out of the presence of the jury, which has not yet come into the courtroom. Mr. Fennelly indicated to me prior to the opening of court that there was a matter that he desired to take up with the Court, and we are doing it for that purpose.

Yes, Mr. Fennelly?

Mr. Fennelly: Your Honor, in this morning's New York Herald Tribune there is the following article—

Colloquy

The Court: Will you keep your voice up? I don't hear you.

Mr. Fennelly: I say, in this morning's New York (1203) Herald Tribune there is the following article, entitled:

"U. S. Says Costello Case Is Proved.

"As the Frank Costello tax evasion trial went into its fourth week yesterday, the government contended that it had already shown that the gambler had made expenditures totaling $150,264.75 in the years 1946 through 1949.

"In that four year period, according to the indictment, Costello reported an income of $75,417.23 and thereby evaded at least $73,437.95 in taxes."

There has been no such—no witness has testified that that is the amount, and the statement that the Government has proved its case I think is highly prejudicial, and I move for a mistrial on the basis of the statement, and I ask that it be marked for identification.

The Court: Mark the paper for identification.

(Marked Defendant's Exhibit OO for identification.)

The Clerk: Do you care to see it?

The Court: Oh, yes, I want to see it.

(Clerk hands Defendant's Exhibit OO for identification to the Court.)

The Court: You say this is in this morning's paper?

Colloquy

Mr. Fennelly: Yes, your Honor, this morning's (1204) Herald Tribune.

(A pause.)

The Court: Do you desire to be heard, Mr. MacMahon?

Mr. MacMahon: Your Honor, simply to say that that report does not emanate from the United States Attorney's office, that the United States Attorney's office has supplied a total of expenditures proved at the end of each day to the Press, but any conclusions drawn from that are those of the particular reporter your Honor, and not of the United States Attorney's office.

At this stage of the case, certainly, there is no proof that all of these expenditures emanate from current income. Of course, that is what the Government does hope to prove at the conclusion of its case.

These reports are simply the conclusions of the Press, your Honor, over which the United States Attorney's office has no control.

The Court: Very well. The motion is denied.

Bring in the jury.

(Jury present.)

The Court: Good morning, ladies and gentlemen.

(1204) EUGENE HUPPENBAUER resumed.

Mr. Christy: I have just a few further questions, your Honor.

The Court: All right.

Direct Examination by Mr. Christy (Continued):

Q. Mr. Huppenbauer, referring to Government's Exhibit 271-R in evidence, I ask you if that is a registration card showing that Frank Costello checked in on October 22 and checked out on October 27? A. Checked out on October 20th.

Q. He checked in on October 20th? A. Yes.

Q. And checked out on October 22nd? A. That is right.

Q. Is that correct? A. That is correct.

Mr. Fennelly: What year?

Mr. Christy: Year 1937.

The Witness: Yes, sir.

Q. Is that right? A. That is right.

Q. Referring to Government's Exhibit 271-H in evidence, is that a folio sheet showing that Mrs. Frank Costello checked in on March 27, 1943? A. Yes, sir.

The Court: Wasn't that gone over yesterday?

Mr. Christy: There are just a couple of dates here I want to check, your Honor.

(1206) Q. Referring to Government's Exhibit 271-Y in evidence, this is a city ledger sheet, is that correct? A. Correct, sir.

Q. And that indicates that a bill was sent to Frank Costello in New York City and that it was paid by him

in the amount of $496.60 on April 26, 1946? A. Right.

Q. Is that correct? A. That is correct.

Q. Referring to Government's Exhibit 271-A in evidence, that would indicate that he had checked out of the hotel on April 18, 1946, is that correct? A. Correct, sir.

Q. And this was the bill, Government's Exhibit 271-Y, which referred to that visit? A. That is right.

Q. Referring to Government's Exhibit 271-BB in evidence, that is a registration card and accompanying folio sheets which show that Mrs. Frank Costello checked into the hotel on December 21, 1945, is that correct? A. 1946.

Mr. Fennelly: '46, according to my record.

Mr. Christy: '46.

Q. And that on December 30, 1946 there was a payment by her of $169.56? A. Correct.

Q. And that that—

(1207) Mr. Fennelly: May I say, we have been over this all yesterday, your Honor?

The Court: It seems to me that is so.

Mr. Fennelly: The witness testified to it yesterday.

Mr. Christy: One more question.

The Court: No, but if you are just repeating—here we are, now, in the fourth week of this trial—if you went through it yesterday. If you represent to me there is something there that you omitted, or something which was brought out unclearly that you desire now to clarify, I will permit you to do it.

Mr. Christy: That is correct, your Honor.

The Court: Point out to me what it is that you want to do now.

Mr. Christy: There is one payment here on Janu-

Eugene Rappenbauer, Sr.—for Government—Cross

ary 2, 1947 which I did not clearly bring out yesterday.

The Court: Very well. You may do so.

Q. And on that visit there was a payment on January 2, 1947 of $113.20? A. Correct.

Q. And that was paid by Frank Costello, according to this record, is that correct? A. Correct.

Mr. Christy: I have no further questions, your Honor.

(1208) *Cross-Examination by Mr. Fennelly:*

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. Now, will you look for—

The Court: Would you wait just a minute, Mr. Fennelly? I want to look up something here in the transcript.

(A pause.)

The Court: All right, Mr. Fennelly. Thank you.

Q. I show you Government's Exhibit 271-A, which is the list of times when Mrs. Costello was in the hotel? A. Yes, sir.

Q. And would you look under date of November 1943 and tell me what period she was in the hotel? A. November 1943?

Q. Yes. A. According to this record, it shows 9/30/43 through 11/21/43, but there was an error on this 9/30.

Eugene Happenbauer, Sr.—for Government—Cross

Q. She actually came in at what date? A. On the 10, according to the record, 10/30.

Q. On October 30? A. October 30, yes.

Q. But she was there through November 21? A. November 21, 1943.

Q. And she was there alone? A. According to the (1209) record, yes.

Q. And she had a safe deposit box at the hotel? A. Yes.

Q. Is that right? A. According to the record here, yes, sir.

Mr. Fennelly: May I point out, your Honor, to the jury that the agreement of Crescent Music Company was signed by Mrs. Costello in—

The Court: What exhibit is it?

Mr. Fennelly: Defendant's Exhibit P was signed in New Orleans by Mrs. Costello on the 19th day of November 1943.

Q. And that was during the time she appears, from your records, to have been at the hotel and alone? A. Yes, sir.

Q. Mr. Kastel maintained rooms at the hotel on a permanent basis, did he not? A. That is right, yes, sir.

Q. And your records indicate that at times Mr. Costello used those rooms? A. That is correct, sir.

Q. And that sometimes Mr. Costello and Mrs. Costello did not use those rooms? A. That is correct.

Q. Will you tell me when Exhibits 271 and 271-A were prepared? A. 271-A? We prepared it since 1936.

(1210) Q. That is kept in the regular— A. That is kept in the regular order.

Q. —course? A. And it is through 1950.

Q. May I look at Exhibit H, please? 271-H. Now, on

some of these bills there is a note, transferred to another account? A. That is correct.

Q. In instances you have bills where there are two numbers on the account—that is not one, but you have some, for instance, that one (indicating)? A. That is right.

Q. Which I refer to, 271-H. The folio covering the second numbered bill is missing? A. Yes, sir.

Q. Without that second folio you could not tell whether that was transferred to another account, could you? A. Not from this account here.

Q. That is right; you would need the second count? A. Need—

Q. To see whether there was a notation on that to find out whether it was transferred? A. Yes, sir.

Q. Is that right? A. That is right.

Q. And without the missing folios you could not tell whether they had been transferred to someone else's account? A. That is correct; but on this card here, 271-A, when the card came up it showed that the account was paid.

(1211) Q. I am not speaking specifically of this one. I am speaking generally of the—unless the record indicates otherwise that it is paid you couldn't tell without the missing folio sheets whether they were transferred to another account? A. That is right.

Q. And there was one folio—I forget the exhibit number—that showed Mr. Costello being in the hotel some 256 days, and that was an error, was it not? A. Yes, sir, that is correct, that was the error.

Q. Do you recall which exhibit number that was?

Mr. Christy: I believe Mr. Fennelly is referring to 271, 271-A.

A. No, that is 271-A shows 255 days, but there is another account indicating the exact date he came.

Eugene Huppenbauer, Sr.—for Government—Redirect

Q. There is also a ledger sheet showing the same thing, and that is what I want to catch the error in. Government's Exhibit 271-V—excuse me, may I look at this under the light? Can you read what the stamp says on that? Maybe that will help you a little (handing witness magnifying glass). A. It looks like it got September 12 or 13, 1945.

Q. And over it is written in pencil September 19, 1946? A. Correct.

Q. And in pencil is written on the check out date June 1, 1947, isn't it? A. Yes, sir.

(1212) Q. And that is an error? A. Yes, sir.

Q. And here is another one, Government's Exhibit 271-N, the folio record shows that Mr. Costello was there April 12, '44, and what does this last figure indicate? A. May 2, 1945.

Q. Or is that—you mean he wasn't in the hotel that time? A. No, that was the error, the time the machine had an error, that should have been '44.

Q. That is another error? A. Another error, yes, sir.

Mr. Fennelly: That is all.

Redirect Examination by Mr. Christy:

Q. Referring to Government's Exhibit 271-V, which shows that Frank Costello checked in on September 13, 1945 and according to that registration card checked out on June 1, 1947, that latter date is an error, is it not? A. Correct, that is an error.

Q. And the accompanying folio sheets with that registration Government's Exhibit 271-V, cover different periods, don't they, they are not consecutive? A. That is right, sir.

Q. And they show charges of minor amounts during the periods on those folio sheets, is that correct? A. Yes, sir.

Q. And was Frank Costello using Phil Kastel's room (1213) at that time? A. Yes, sir, that is Mr. Kastel's suite, 560 and 562.

Q. And that does not represent any one long visit by Frank Costello, does it? A. No, sir.

The Court: Does that conclude your questioning?

Mr. Christy: No further questions, your Honor.

The Court: Very well. You are excused.

Mr. Christy: May we substitute photostats for these records?

The Court: You may.

The Witness: Thank you, sir.

Mr. Christy: Thank you, Mr. Huppenbauer.

The Witness: Thank you.

(Witness excused.)

Mr. MacMahon: The Government calls Mr. George Wolf.

GEORGE WOLF, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. MacMahon:

Q. Where do you live, Mr. Wolf? A. 1120 Park Avenue.

Q. And what do you do, Mr. Wolf? A. I am a lawyer.

Q. And where do you have your office? (1214) A. 509 Madison Avenue.

Q. Are you here pursuant to a subpoena? A. I am.

And, do you know the defendant Frank Costello? A. I do.

Q. How long have you known him? A. Since the fall of 1943.

Q. And have you seen him frequently since that time? A. Yes.

Q. When did you last see him, Mr. Wolf?

Mr. Fennelly: I object to it as immaterial.

A. About—

The Court: Overruled.

A. About four or five days ago.

Q. Mr. Wolf, did you make a deposit in your bank account on April 15, 1944? A. I don't know. You have the deposit slips and I wish you would show them to me, Mr. MacMahon.

Q. Mr. Wolf, I refer you to that part of Government's Exhibit 85 for identification which is a deposit slip dated April 15, 1944? A. That is right.

Q. On your Special Account? A. That is right.

Q. Did you make a deposit on that day? A. I did.

Q. In what amount, Mr. Wolf? A. $42,000.

Q. From whom did you receive the money? (1215) A. Mr. Costello.

Q. On what day? A. I imagine on that day.

Q. In what form did you receive it? A. Cash.

Q. Do you recall the denomination of the bills? A. No; I think they were fifty and hundred dollar bills; I am not sure.

Q. Mr. Wolf, I refer you to that part of Government's Exhibit 85 for identification which has previously been identified as a deposit ticket on your account dated May 16, 1944. Did you make a deposit on that day? A. I did.

Q. How much was it? A. $7,000.

Q. From whom did you receive the money? A. Mr. Costello.

Q. In what form? A. Cash.

Q. What did you use this money for, Mr. Wolf? A. That was part of money that went towards the purchase of a building, or buildings, rather, 79-87 Wall Street and I think 112 Water Street.

Q. Did you receive any other money from Mr. Costello in connection with the purchase of that building? A. An additional $4,000.

Q. And in what form did you receive that? A. Cash.

Q. And what was that money used for? (1216) A. Towards the purchase of a—towards the purchase of the property and part of it I think to open the bank account of 79 Wall Street Corporation, a corporation that was formed to take title to that property.

Q. Were you present, Mr. Wolf, on the signing of the contract for 79 Wall Street? A. No.

Q. Where were you? A. I was away, to Hot Springs.

Q. Where? A. To Hot Springs.

Q. Hot Springs? A. Hot Springs.

Q. Hot Springs, Arkansas? A. Yes.

Q. Did you travel out there with anyone else? A. Yes.

Q. Who? A. With Mr. Costello.

Q. How did you travel? A. Train.

Q. What kind of accommodation did you have on the train? A. I don't remember. I think we—I think I had a roomette. I think that is what they call it.

Q. Did Mr. Costello travel with you in the roomette? A. Yes, I think he, too, had a small roomette. That was the best accommodation we could get.

Q. Have you ever known Mr. Costello to travel by coach or bus?

Mr. Fennelly: I object to that as immaterial.

The Court: I think so. I would say I think (1217) it is immaterial.

Mr. MacMahon: Your Honor—

The Court: Now, if you have any occasion when two men traveled together you may elicit from him where they traveled, and if he knows he can tell how much it cost.

Q. Did you travel on other occasions with Mr. Costello? A. Yes.

Q. What means of transportation, and what type of accommodation, and when? A. I don't remember when. I told you about the incident I—you might refresh my recollection on the date, but I traveled to Albany with him by train, Pullman, came back the same day.

Q. Now, who took title to the property at 79 Wall Street? A. 79 Wall Street Corporation.

Q. Do you recall when that was, Mr. Wolf? Was that in May 1944? A. Yes.

Q. And had 79 Wall Street been organized in April, on April 26, 1944? A. That is right. I had suggested to Mr. Costello to take title in a corporate name.

Q. In whose name was the stock of 79 Wall Street issued? A. The stock was issued in the name of Loretta B. Costello but Mr. Costello was the beneficial or equitable owner and so declared to be.

(1218) Q. He openly was the owner of it? A. Openly the owner of that stock.

Q. Were you the treasurer of 79 Wall Street? A. Yes.

Q. Did you sign virtually all the checks? A. Yes.

Q. —for 79 Wall Street? A. Yes, sir.

Q. The total moneys received from Frank Costello in connection with 79 Wall Street was $53,000, is that right, Mr. Wolf? A. That is right.

Q. Of that amount how much was invested in 79 Wall Street?

May I see what you are referring to, sir?

Mr. Wolf, I refer you to Government's Exhibit 18 for identification, the 1950 income tax return of Frank and Loretta B. Costello.

The Court: What is the exhibit number?

Mr. MacMahon: Exhibit 18 for identification.

Q. (Continuing) And I refer you to the schedule of capital gains in that part relating to the cost of 79 Wall Street. Do you see that, sir? A. Yes.

Q. How much of it was invested, of the $53,000, in 79 Wall Street? A. $52,500.

Q. What happened to the other five hundred, Mr. Wolf? A. $500 was advanced to a Miss Josephine Strauss, (1219) who was the agent of the building and who wanted the money to open the account for that particular building, which money was later returned to the corporation and by the corporation returned to Mr. Costello.

(Market Government's Exhibit 278 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 278 for identification and ask you if that is the check which represents the $500 returned to Mr. Costello? A. That is right.

Mr. MacMahon: Your Honor, at this time Government offers so much of the 1950 income tax return as refers to the purchase of the stock in 79 Wall Street Corporation.

The Court: That is Exhibit 18?

Mr. MacMahon: That is right, your Honor. The exhibit—

The Court: Will you point out to me where it appears on the exhibit?

Mr. MacMahon: Yes, sir, right there (indicating).

The Court: Yes.

Mr. MacMahon: And to the sale and disposition, your Honor, so as to show it was held beyond the December 31, 1949. And Government's Exhibit 278.

The Court: Would you let me see the Exhibit 85—was that the transcript of the account—you just showed (1220) the witness?

(Exhibit handed to the Court.)

Mr. Fennelly: I object to 18 for identification on the ground that it is irrelevant and immaterial.

The Court: He has not offered the whole exhibit. He is offering only so much of it as shows that which he mentioned.

Mr. Fennelly: I understand that. The witness has testified, I believe, that the—

The Court: But you are objecting to the offer as limited?

Mr. Fennelly: That is right.

The Court: I just wanted to be clear what the objection was.

I wonder why that isn't so, that the 1950 return is irrelevant here? You have the testimony of this witness.

Mr. MacMahon: I have no testimony, your Honor, that it was held beyond December 31, 1949.

The Court: It seems to me that could be very readily developed from this witness.

George Wolf—for Government—Direct

Q. Mr. Wolf, was the investment in 79 Wall Street Corporation held beyond December 31, 1949? A. Yes.

Mr. Fennelly: No objection to 278.
The Court: Yes. That may be marked.

(1221) (Government's Exhibit 278 for identification received in evidence.)

(Marked Government's Exhibit 279 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 279 for identification and ask you if that is a check which you drew on your Special Account? A. Yes.

Q. What did you do with the proceeds of this check? A. I cashed it and turned it over to Mr. Costello.

Q. And this is a check for $9,500, is that right? A. $9,500.

Q. And did that represent the return of $9,500 which you had previously received from Mr. Costello? A. Yes.

Q. In connection with a tax lien? A. In connection with the attempted purchase of a tax lien and the deed to the property of 112 Water Street.

Q. Mr. Wolf, I refer you to that part of Government's Exhibit 85 for identification previous identified as deposit tickets on your account dated July 27, 1945 and August 17, 1945? A. Yes.

Q. And you notice that the total of those amounts is $9,895? A. No.

Q. Or 8,000—, A. 8,895.

Q. —$895. Mr. Wolf, were those deposits part (1222) of the $9,500 you had received from Mr. Costello? A. Yes.

Q. What happened to the other $605? A. The other $605 was paid over to a lawyer by the name of Harry Shapiro for the purpose of putting a deposit down on a purchase

of a tax lien, the deposit being $605 and the price being $6,050.

Q. Nothing came of this transaction except—it wasn't completed, is that right? A. Wasn't completed, and I returned the money to Mr. Costello in the form that he gave it to me.

Mr. MacMahon: Your Honor, at this time Government offers so much of Government's Exhibit 85 for identification as reflects the deposit ticket of April 15, 1944, deposit ticket of May 16, 1944, the deposit ticket of July 27, 1945 and the deposit ticket of August 17, 1945, and Government's Exhibit 279 for identification, and the whole of Government's Exhibit 85 for identification.

The Court: The whole exhibit?

Mr. MacMahon: The whole exhibit, yes.

(A pause.)

Mr. Fennelly: No objection to 279.

The Court: It may be marked.

(Government's Exhibit 279 for identification received in evidence.)

(1223) Mr. Fennelly: No objection.

The Court: 85 may be received.

(Government's Exhibit 85 for identification received in evidence.)

The Court: Perhaps this might be a good place to take our "vacation" before you get into some other phase of it. All right.

(Short recess.)

(Jury present.)

The Clerk: Government's Exhibit 281 for identification.

The Court: Isn't it 280?

The Clerk: I have one here 280 Id. check. 279 was that check for $9,500.

The Court: Yes. What do you have for 281? Or 280, rather?

The Clerk: 280 I have check marked for identification with no description.

Judge, may I go back?

The Court: 278 was a check for five hundred.

The Clerk: 279—

The Court: 279 a check for $9,500. And the next exhibit I have any record of was the offer of 85 for identification, which was received.

The Clerk: You don't have 280.

(1224) The Court: The present exhibit is 280.

(Marked Government's Exhibit 280 for identification.)

The Court: May I see it, please?

All right.

By Mr. MacMahon:

Q. Mr. Wolf, I show you Government's Exhibit 280 for identification and I ask you if that is a check drawn by you for 79 Wall Street Corp.? A. Yes.

Q. Do you recognize the signature on the back? A. Yes.

Q. Whose signature is it? A. Mr. Costello's.

Q. And this check is for $25,117.51, is that right? A. Yes.

Q. Payable to Frank Costello? A. Yes.

Q. Does that money represent the return of a loan by Frank Costello to 79 Wall Street Corporation? A. Right.

Q. When did Mr. Costello make the loan? A. What is the date of the check?

Q. November 5, 1947. A. September 1947.

Q. And this represents a return of that loan, plus interest, is that right? A. Plus interest to the date of November.

Q. And the amount of the loan was $25,000? (1225) A. $25,000.

Q. In what form did Costello make that loan to 79 Wall Street? A. Check.

Q. Whose check? A. Check of Frank Erickson.

Q. Do you know what bank it was drawn on? A. No.

Q. Did Costello endorse the Erickson check? A. I am not too sure if the check was paid direct—payable to 79 Wall Street Corporation or to Frank Costello and endorsed by Frank Costello to the 79 Wall Street Corporation, but it went into the bank account of 79 Wall Street Corporation.

(Marked Government's Exhibit 281 for identification.)

Mr. MacMahon: Your Honor, I would like to correct the record. I misstated this check. It is $25,117.81, Government's Exhibit 280 for identification.

The Clerk: 25,000, and what was that?

Mr. MacMahon: And $117.81.

The Court: 117. I thought you said fifty-one.

Mr. MacMahon: That is right.

The Clerk: $25,117.81. Thank you, sir.

Q. Mr. Wolf, I show you Government's Exhibit 281 for identification and I ask you if you have ever seen it before? A. I would say that I had; it is familiar (1226) to me. I have no definite recollection—

The Court: You say you have or have not?
The Witness: I have.
The Court: Yes.

Q. When did you see it, Mr. Wolf, before? A. My recollection is that I saw it when made.

Q. And it was made February 23, 1947? A. No. September 23, '47.

Q. And it is a promissory note to Frank Erickson from Frank Costello, is that right? A. That is right.

Q. And in the amount of $25,000? A. That is right.

Q. Was that note prepared in your office? A. I think it was. It resembles a form of a note that I had at that time in my office.

Q. Are you certain it was prepared in your office? A. No.

Q. Were you present when the note was delivered? A. No.

Q. Were you present when the arrangements for the loan were discussed? A. No; I spoke to Mr. Costello about it.

Mr. Fennelly: I did not hear the end of that answer.

A. I spoke to Mr. Costello about it or he spoke to me about it.

(1226-A) Q. He told you he had borrowed the money from Erickson? A. Yes.

Q. But you were not present at any time when that conversation took place with Erickson? A. Not between Erickson and Mr. Costello.

(Marked Government's Exhibit 282 for identification.)

(1227) Q. Mr. Wolf, I show you Government's Exhibit 282 for identification. This is another promissory note from Frank Costello to Frank Erickson, dated November 9, 1946. Was that note prepared in your office? A. I think it was.

Q. Are you certain? A. No.

Q. Were you present when any money was delivered— A. No.

Q. —in connection with this note?

(Marked Government's Exhibit 283 for identification.)

Mr. MacMahon: Mark this 283-A.

(Marked Government's Exhibit 283-A for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 283 for identification and ask you if that is a letter signed by you? A. Yes.

Q. It is dated November 8, 1947? A. Yes.

Q. Addressed to Mr. Frank Erickson? A. Right.

Q. And you enclosed a check for a thousand dollars covering interest at 4 per cent for one year from November 9, 1946 to November 9, 1947, is that right? A. That is right.

Q. On the note due November 9, 1947, is that right? A. 6.

(1228) Q. '47. A. Oh, on this. I am sorry. I am sorry.

Q. Is that right, November 9, 1947? A. No, that is the—

true, but you are talking of the note. The note is a 1946 note. It is due on November—

The Court: He says was it the note that was due—

The Witness: Yes.

The Court: —November 1947?

The Witness: Yes.

Q. I show you Government's Exhibit 283-A for identification and ask you if this is the check you enclosed in the letter, Government's Exhibit 283— A. It is.

Q. —for identification? And do you recognize the endorsement on the back? A. I recognize the—there are several, and I recognize—yes, I recognize Miss Erickson's endorsement—Mr. Erickson's endorsement.

Q. Do you also recognize Mr. Costello's? A. No. That is my handwriting. Costello authorized me to—called me—

Q. Did he authorize you to sign his name? A. He did, he asked me to sign the check, endorse his name to it and pay that interest on that 1946 note.

(Marked Government's Exhibit 284 and 285 for identification.)

(1229) Q. Mr. Wolf, I show you Government's Exhibit 284 for identification and I ask you if this letter, dated June 30, 1948, was prepared in your office? A. Yes.

(Marked Government's Exhibits 286 and 287 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 285 for identification a letter dated August 30, 1948, and I ask you if this letter was prepared in your office? A. Yes.

(Marked Government's Exhibit 288 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 287 for identification, a letter dated December 22, 1948, and I ask you if this letter—

The Court: Is that 287?

Mr. MacMahon: 287, yes.

The Court: Would you let me look at it first, and take 286? You are getting ahead of me.

Mr. MacMahon: I am sorry. I got the wrong one.

Q. I show you Government's Exhibit 286 for identification, a letter dated November 4, 1948, and I ask you if that letter was prepared in your office? A. It was.

(Marked Government's Exhibit 289 for identification.)

(1230) Q. Mr. Wolf, I show you Government's Exhibit 287 for identification and ask you if that letter was prepared in your office? A. Yes, and signed by me.

Q. That letter is dated December 22, 1948, is that right? A. That is right.

Q. Mr. Wolf, I show you Government's Exhibit 288 for identification, a letter dated September 13, 1949, and ask you if that letter was prepared in your office? A. Yes.

Q. I show you Government's Exhibit 289 for identification, a letter dated November 8, 1949, and ask you if that letter was prepared in your office? A. It was.

Mr. MacMahon: Your Honor, at this time the